

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

MICHAEL J. MYERS,)	
)	
Plaintiff,)	
)	Civil Case No. 14-4121
vs.)	
)	
)	FIRST AMENDED COMPLAINT
)	
JASON M. GANT, in his official)	
capacity as Secretary of State for the)	
State of South Dakota,)	
)	
Defendant.)	

FIRST AMENDED COMPLAINT

Plaintiff, Michael J. Myers, by and through his counsel, respectfully submits his First Amended Complaint against Jason M. Gant, in his official capacity as Secretary of State for the State of South Dakota, and hereby states as follows:

JURISDICTION AND VENUE

1. The plaintiff brings this action in this Court pursuant to 42 U.S.C. § 1983.
2. Federal jurisdiction for this action is proper under 28 U.S.C. §§ 1331, 1343(a), 2201 and 2202. Federal supplemental jurisdiction is proper under 28 U.S.C. § 1367(a).
3. Venue is proper in this judicial district under 28 U.S.C. § 1391(b).

PARTIES

4. The plaintiff, Michael J. Myers, is a citizen of the United States and resides in Turner County in the State of South Dakota.

5. The defendant, Jason M. Gant, is the Secretary of State for the State of South Dakota. Defendant Gant is sued in his official capacity as Secretary of State for the State of South Dakota. As such, Secretary Gant has a duty to oversee the statewide electoral process from this office in accordance with federal and state law. Secretary Gant maintains a public office in Hughes County in the State of South Dakota.

STATEMENT OF FACTS

6. On January 9, 2014, Plaintiff Myers and Caitlin F. Collier (Collier) filed a form with the Secretary of State's Office entitled "Independent Candidate for President or Governor Declaration of Candidate and Certification of Running Mate." (Doc. 10, Exhibit 2). Upon this form, Plaintiff declared his intention to run for Governor of South Dakota and certified Collier as his lieutenant governor candidate.

7. Plaintiff thereafter circulated his nominating petition as an Independent gubernatorial candidate. A non-party Independent candidate for Governor is required to obtain a nominating petition signed by no less than one percent (1%) of the total votes cast for Governor in the previous gubernatorial election. SDCL 12-7-1. The required minimum number of signatures of registered South Dakota voters for an Independent candidate for Governor for the year 2014 was 3,171 which is one-percent (1%) of the total votes cast for Governor in 2010.

8. Plaintiff's nominating petition was submitted with over 3,171 signatures of registered South Dakota voters and accepted by the Secretary of State's Office on April 23, 2014.

9. On June 16, 2014, the Secretary of State's Office received a form entitled "Candidate's Request to Withdraw Nomination" from Collier, signed under oath, requesting her name and nomination be withdrawn from the general election ballot. (Doc. 10, Exhibit 4). South

Dakota Codified Law (SDCL) 12-5-66, which governs the withdrawal of a candidate, provides:

Any person nominated to any elective office may cause his name to be withdrawn from nomination by request in writing, subscribed and sworn to by him before any officer qualified to administer oaths and take acknowledgments. The request shall be filed with the officer with whom the nominating petition was filed pursuant to § 12-6-4, not later than the first Tuesday in August at 5:00 p.m. before the ensuing election. No name so withdrawn shall be printed upon the ballots to be used at such election. (emphasis added).

10. On July 15, 2014, the Secretary of State's Office received a form entitled "Independent Candidate for President or Governor Declaration of Candidate and Certification of Running Mate" from Hubbel. (Doc. 10, Exhibit 5). The form was unsigned by Plaintiff Myers.

11. On July 18, 2014, the Secretary of State's Office provided Hubbel written notification that Collier could not be removed from the ballot and that Hubbel could not be certified as the Independent candidate for Lieutenant Governor. (Doc. 10, Exhibit 6).

12. On Monday, August 11, 2014, Plaintiff Myers sent by registered mail the contents of three documents to the Secretary of State's Office to certify the nomination of Hubbel as his Lieutenant Governor candidate.

13. The three documents Plaintiff Myers sent by registered mail on Monday, August 11, 2014, were: (1) a hand-written note signed and dated by the plaintiff to request the Secretary of State's Office to certify the nomination of Hubbel as his Lieutenant Governor candidate in replacement of Collier; (2) a form entitled "Independent Candidate for President or Governor Declaration of Candidate and Certification of Running Mate" signed by Plaintiff Myers and the plaintiff's chosen replacement running mate, Hubbel, to certify the nomination of Hubbel as his Lieutenant Governor candidate in replacement of Collier; and (3) a form entitled "Certificate of Nomination to Fill a Vacancy" signed by Plaintiff Myers and the plaintiff's chosen replacement running mate, Hubbel, to certify the nomination of Hubbel as his Lieutenant Governor candidate

in replacement of Collier.

PRAYER FOR RELIEF

14. WHEREFORE, Plaintiff Myers prays for relief from the Court pursuant to 42 U.S.C. § 1983 in violation of Myers' rights under the First and Fourteenth Amendments of the U.S. Constitution. Myers requests that the Court finds the defendant's failure to approve the substitution and replacement of Myers' running mate unconstitutional.

15. The plaintiff requests preliminary and permanent injunctive relief from the Court ordering Secretary Gant, and his agents and employees, from enforcing, applying, or implementing the complained-of laws, and ordering Secretary Gant to certify the nomination of Hubbel as the Lieutenant Governor candidate on the 2014 general election ballot.

16. The plaintiff requests that the Court finds that no compelling state interest exists which is narrowly tailored to justify the wholly inconsistent application of state law between non-party affiliated and party affiliated candidates for public office concerning the time of filing certificates of nominees and the substitution and replacement procedures in the event of a candidate's withdrawal.

17. The plaintiff requests declaratory relief from the Court under 28 U.S.C. §§ 2201 and 2202.

18. The plaintiff requests that the Court award him reasonable attorney's fees as part of the costs to proceed with this action pursuant to 42 U.S.C. §§ 1983 and 1988(b).

19. The plaintiff requests any other relief which the Court finds equitable and just.

Respectfully submitted,

MICHAEL J. MYERS

By his attorney,

/s/ Edward K. Welch

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Dated: August 14, 2014

CERTIFICATE OF SERVICE

I, Edward K. Welch, hereby certify that a copy of Plaintiff Myers' First Amended Complaint was filed in the above captioned matter electronically through the CM / ECF system, upon the following persons:

Richard M. Williams
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Respectfully submitted,

/s/ Edward K. Welch

Edward K. Welch, Attorney for Plaintiff

Dated: August 14, 2014